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Understanding the Doctrine of Equitable Estoppel in Florida

CRAIG A. JASLOW*

Despite the apparent simplicity of the doctrine of equitable estoppel, the doctrine is not as predictable as a first glance would indicate. This article examines the case law construing the three elements of the doctrine as well as an exception to the doctrine. The author provides both confused property owners and local governments with an understanding of Florida case law.

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I. INTRODUCTION

The doctrine of equitable estoppel has had a significant impact on both developers and municipalities in Florida.¹ Generally, the issue of equitable estoppel arises after a property owner prepares for or begins construction on his property and then the relevant local government attempts to prevent the completion of that project by enacting a new ordinance, revoking prior authorization or refusing to issue necessary permits. The government's reasons for preventing such completion may vary from a simple change of mind to a legitimate concern for the health, safety, welfare and morals of the community. Notwithstanding the legitimacy of the government's reasons, the property owner will then pursue court action—claiming that the government is equitably estopped from preventing the project's completion. In order to successfully invoke the doctrine of equitable estoppel, the property owner must establish by a preponderance of the evidence² that he has (1) relied in good faith (2) on an act or omission of that government (3) to make such a substantial change in position or incur such extensive obligations and expenses that it would be highly unjust and inequitable to destroy the right acquired.³

A substantial interest in the status quo often gives rise to a property owner's claim of vested rights such that the interest cannot be defeated or lessened. In Florida, the doctrine of vested rights is generally interchangeable with that of the doctrine of equitable estoppel.⁴ If facts justifying the application of equitable estoppel exist then rights will also vest.⁵

1. See generally C.L. SIEMON & W.U. LARSEN, *VESTED RIGHTS—BALANCING PUBLIC AND PRIVATE DEVELOPMENT EXPECTATIONS* (1982) (discussion of the importance of establishing vesting rights standards and legislation and the appropriate remedies necessary for solving the vesting dilemma); 1 J.C. JUERGENSMEYER & J.B. WADLEY, *ZONING ATTACKS AND DEFENSES—THE LAW IN FLORIDA* 35-44 (1980) (discussion of the various elements of equitable estoppel and zoning); Rhodes, *Vested Rights Update*, 54 FLA. B.J. 787 (1980) (discussion of equitable estoppel and tests frequently used by the courts in applying the doctrine); Heeter, *Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes*, 1971 URB. L. ANN. 63 (compensatory land use control mechanisms for paying damages to landowners before and after imposition of regulations).

2. *Quality Shell Homes and Supply Co. v. Roley*, 186 So. 2d 837, 841 (Fla. 1st DCA 1966).

3. *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15-16 (Fla. 1976).

4. Rhodes, *supra* note 1.

5. See *City of Hollywood v. Hollywood Beach Hotel Co.*, 283 So. 2d 867, 869 (Fla. 4th DCA 1973), *rev'd in part*, 329 So. 2d 10 (Fla. 1976); *City of Boynton Beach v. Carroll*, 272 So. 2d 171, 173 (Fla. 4th DCA), *cert. denied*, 279 So. 2d 871 (1973); *Edelstein v. Dade County*, 171 So. 2d 611 (Fla. 3d DCA 1965); *Sarasota County v. Walker*, 144 So. 2d 345, 348 (Fla. 2d DCA 1962).

Despite the apparent clarity of the three elements of equitable estoppel, the scope of the doctrine in Florida is not always clear. In recent years, the numbers of permits, hearings, authorizations, requirements, conditions, regulations, building codes, zoning ordinances, statutes and other official actions and guidelines have proliferated, thus further complicating the issue. Frequently, local governments undertake action that leads to a property owner's claim that equitable estoppel prohibits the action.⁶ As a result, local governments may refuse to act in certain instances due to the threat of equitable estoppel. On the other hand, property owners may often wrongly believe that the doctrine protects them. It is likely that neither party is really sure whether equitable estoppel actually applies. Therefore, it is necessary to develop an in-depth understanding of the Florida courts' interpretation of the three elements of the doctrine as well as a possible "new peril" exception to the doctrine.

II. GOOD FAITH REQUIREMENT

In order for the doctrine of equitable estoppel to apply in Florida, the property owner must establish that he relied on the government in good faith. Denial of equitable estoppel due to a lack of good faith has occurred in situations where the landowner (1) knew or should have known that reliance on the government act was premature; (2) engaged in inappropriate action or inaction which resulted in self-created hardship; or (3) did not supply the government body with all of the necessary and required information.

Nevertheless, the majority of Florida cases addressing the good faith requirement deal with a concept known as the "red flag" doctrine. Although the scope of this doctrine has narrowed since its first application, the red flag doctrine restricts the scope of equitable estoppel by rebutting the existence of good faith.

A. *The Red Flag Doctrine*

The Supreme Court of Florida first established the red flag doctrine in *Miami Shores Village v. William N. Brockway Post No. 124*.⁷ The court in *Brockway* held that when a property owner, due to the warning of certain "red flags," has good reason to be-

6. See Rhodes, *supra* note 1.

7. 156 Fla. 673, 24 So. 2d 33 (1945) (en banc).

lieve that the "official mind" of the relevant government might soon change, reliance in good faith is not possible.⁸ Initially, the scope of these red flags was very broad. As a result, the red flag doctrine provided the courts with a powerful mechanism for denying the application of equitable estoppel. Later, the Supreme Court of Florida in *Sakolsky v. City of Coral Gables*,⁹ considerably narrowed the scope of the red flag doctrine, thus enhancing the availability of equitable estoppel to property owners.

In *Brockway*, the respondents, relying on a building permit, incurred financial obligations and began construction of a building. Prior to completion of the project, however, a newly elected village council revoked the permit.¹⁰ The landowners sued, arguing that the village was estopped from revoking the permit. The Supreme Court of Florida held that the impending election and possible change of village officers prevented good faith reliance on the acts of the then current government. The court, noting the "hot municipal campaign" in which the building permit itself was an issue, stated that "red flags were flying" and the owners "cannot complain of a lack of notice."¹¹

Ten years later, the Supreme Court of Florida in *Bregar v. Britton*,¹² restricted the application of the red flag doctrine in *Brockway* to situations in which political protests arose prior to the property owner's reliance. In *Bregar*, a property owner, relying on a resolution by the Board of County Commissioners rezoning his property, incurred substantial expenditures in preparing for construction. Nevertheless, after protests from county citizens, the Board rescinded the resolution. Unlike the landowner in *Brockway* the plaintiff in *Bregar* had no "good reason to believe, before or while acting to his detriment, that the official mind would soon change"¹³ No election was pending and there was no public protest prior to the owner's expenditures. Therefore, the court held that the Board was equitably estopped from rescinding its resolution.¹⁴

8. *Id.* at 680, 24 So. 2d at 36.

9. 151 So. 2d 433 (Fla. 1963).

10. *Brockway*, 156 Fla. at 676-77, 24 So. 2d at 34-35.

11. *Id.* at 680, 24 So. 2d at 36.

12. 75 So. 2d 753 (Fla. 1954) (en banc), *cert. denied*, 348 U.S. 972 (1955); *see infra* text accompanying notes 109-110.

13. *Bregar*, 75 So. 2d at 756.

14. *Id.* *Bregar* stands for the proposition that public protest after the landowner's change of position is not sufficient to prevent good faith reliance. Further, this case also operates to prevent the denial of equitable estoppel when the local government merely

A series of cases soon followed *Bregar* expanding the scope of the red flag doctrine, and thereby making the application of equitable estoppel more difficult. In the first of these cases, *Sharrow v. City of Dania*,¹⁵ an owner extensively prepared his property for construction in reliance upon a permit authorizing a building with no setback. Unfortunately, by the time the city had issued the permit, it had already passed a first reading of an ordinance requiring a six-foot setback. Subsequently, when the city enacted that ordinance, it revoked the permit.¹⁶ The Supreme Court of Florida held that any rights already vested in the permit were subject to the warning evidenced by the pending ordinance.¹⁷ In this case, the property owner had "good reason to believe, before or while acting to his detriment, that the official mind would soon change"¹⁸ Consequently, the court ruled that a pending ordinance, even on first reading, constituted a red flag, and equitable estoppel did not apply.¹⁹ Three years later, the First District Court of Appeal in *State ex rel Jaytex Realty Co. v. Green*,²⁰ extended the red flag doctrine to a situation involving a pending petition for rezoning. Relying on *Brockway* and *Sharrow*, the court in *Green* refused to estop the Board of County Commissioners from revoking a building permit.²¹

changes its position in the future and decides to revoke or rescind its past action. Obviously, a property owner would have no good reason to believe that the official mind would soon change.

15. 83 So. 2d 274 (Fla. 1955).

16. *Id.* at 275.

17. *Id.*

18. *Id.* at 276.

19. See also *City of Fort Pierce v. Davis*, 400 So. 2d 1242 (Fla. 4th DCA 1981) (involving a pending change of zoning); *Lambros, Inc. v. Town of Ocean Ridge*, 392 So. 2d 993 (Fla. 4th DCA 1981) (involving a pending ordinance); *City of Boynton Beach v. Carroll*, 272 So. 2d 171 (Fla. 4th DCA) (involving a pending zoning amendment), *cert. denied*, 279 So. 2d 873 (1973).

20. 105 So. 2d 817 (Fla. 1st DCA 1958). The county issued a building permit in accordance with the then existing zoning. However, a petition for rezoning was pending at the time. One week later, the county revoked the permit; and three weeks later, it enacted the rezoning petition. The court stated that the facts were almost identical to those in *Miami Shores Village v. William N. Brockway Post No. 124*, 156 Fla. 676, 24 So. 2d 33 (1945) (en banc); *Sharrow v. City of Dania*, 83 So. 2d 274 (1955); and *City of Ft. Lauderdale v. Lauderdale Indus. Sites*, 97 So. 2d 47 (Fla. 2d DCA 1957). *Id.* at 818.

21. *Green*, 105 So. 2d at 818; cf. *City of Ft. Lauderdale v. Lauderdale Indus. Sites*, 97 So. 2d 47 (Fla. 2d DCA 1957) which was also decided during this period. In *Lauderdale Indus. Sites*, the property owner relied on a city ordinance rezoning his property and incurred substantial expenses. The property owner, however, did not apply for a building permit and did not begin construction. Following passage of the ordinance, it became a political issue in the election campaign then in progress. A new city commission was elected and the ordinance was repealed. The court denied equitable estoppel based on the red flag doctrine

The final expansion of the doctrine occurred in *City of Miami v. State ex rel Ergene, Inc.*²² When the City of Miami passed an ordinance granting a variance on the appellee's property, neighboring property owners instituted a suit challenging the ordinance. While the suit was pending, the city granted appellee a building permit, and he commenced construction. Later, the city revoked the permit. The Third District Court of Appeal held that the city was not equitably estopped. That court ruled that the pending litigation prior to incurring any expenditures was a red flag which gave the appellee "good reason to believe . . . that the official mind would soon change" ²³

The direction of Florida's courts underwent a turnabout with the decision in *Sakolsky v. City of Coral Gables*.²⁴ In *Sakolsky*, the petitioner received permission from the City Commission, in the form of an ordinance and a foundation permit, for a twelve story apartment building, despite strenuous public objection and the threat of a lawsuit. In reliance thereon, the petitioner incurred substantial expenses.²⁵ Even though there was "strenuous objection" to the city's granting of permission, "suit was threatened," and the campaign of an impending election revolved around the petitioner's proposed high-rise, the petitioner continued to rely on the ordinance and permit.²⁶ Nevertheless, the Supreme Court of Florida estopped the city from rescinding the permit following the election and the resulting change in the official mind of the city. The court noted that the petitioner was not a party to the suit against the city and such "circumstantial notice that the 'official mind' might change" was not sufficient to deny equitable estoppel.²⁷ Additionally, the court rejected *Brockway* and held that "the 'red flags' of a political contest" and "an impending change of municipal officers"²⁸ are not sufficient to prevent good faith reliance on an act of the current government. The court reasoned that even though membership in the governing bodies of a municipality are constantly subject to change, the basic concepts of equitable estop-

of *Brockway* and stated that the election "did or should have put the plaintiff on notice that it would be proceeding at its peril in relying on the zoning change" *Id.* at 53.

22. 132 So. 2d 474 (Fla. 3d DCA 1961).

23. *Id.* at 476.

24. 151 So. 2d 433 (Fla. 1963); see Boyer & Ross, *Real Property Law*, 18 U. MIAMI L. REV. 799, 832 (1964); see also *infra* text accompanying notes 128-30, 212-13.

25. *Sakolsky*, 151 So. 2d at 434-35.

26. *Id.* at 435.

27. *Id.*

28. *Id.*

pel allow municipal actions to be relied upon, thereby giving stability to those actions.²⁹

Interestingly, however, *Sakolsky* restricted its holding that an impending election is not a sufficient red flag to deny the application of equitable estoppel. Despite overruling the central rule of *Brockway*, the court noted that the resulting denial of equitable estoppel in *Brockway* might still be correct.³⁰ In *Brockway* the village issued the permit on authority of an ordinance enacted without any adversary hearing and argument.³¹ Consequently, although public dispute after a government action taken following a public adversary hearing would not be a valid red flag, public dispute over that action, absent any adversary hearing and argument, might still be a valid red flag preventing good faith reliance.³² In the former case, the public would have already had its chance to make its objections known, and the government body would clearly be sanctioning reliance on its action. Furthermore, the court refused to overrule *Ergene*, stating that "[t]he effect of pending litigation directly attacking the validity of a permit or zoning ordinance [specifically granted at a landowner's request] may present a very different problem"³³ from the pending litigation in *Sakolsky* in which the landowner was not directly involved. The court also upheld *Sharrow*, noting that *Sakolsky* did not involve any pending government action which could operate to negate or prevent good faith reliance.³⁴

Following *Sakolsky*, the Second District Court of Appeal in *Town of Largo v. Imperial Homes Corp.*³⁵ further restricted the scope of the red flag doctrine. In *Imperial*, a developer incurred substantial expenses in reliance on rezoning and representations made by town officials. Several years later, a planning process commenced to update the town's zoning. The town announced public hearings on a newly proposed zoning ordinance. At those hearings, several town residents raised objections to the developer's pro-

29. *Id.* In a similar case, *City of Gainesville v. Bishop*, 174 So. 2d 100 (Fla. 1st DCA 1965) the court relied on *Sakolsky*. *Bishop* involved a plaintiff who substantially changed his position in reliance upon the city's rezoning of his property to permit construction of a service station. When the city, following a city election, attempted to prevent construction, the court invoked the doctrine of equitable estoppel. Citing *Sakolsky*, the court held that an impending municipal election did not prevent good faith reliance. *Id.* at 105.

30. *Sakolsky*, 151 So. 2d at 435 & n.8.

31. *Brockway*, 156 Fla. at 676-77, 24 So. 2d at 34-35.

32. *Sakolsky*, 151 So. 2d at 435 n.8.

33. *Id.* at 436.

34. *Id.*

35. 309 So. 2d 571 (Fla. 2d DCA 1975); see *infra* text accompanying notes 111-12.

posed project. As a result, the town downzoned the property. The town claimed that because zoning was in progress, any reliance by the developer after the date of the notice of public hearings was not in good faith. The town also contended that public protest at the hearings prevented any good faith reliance subsequent to the hearings.³⁶ The court, relying on *Sakolsky*, rejected both arguments, found that the developer had acted in good faith, and equitably estopped the town from downzoning the property.³⁷ The court stated:

[E]ven though the number of protesters increased at every subsequent meeting, at all times until [the downzoning], the "official mind" of the Town Commission continued to reflect the view of permitting [the developer] to go forward with its construction. In essence, the Town has asked us to rectify what it now considers to have been a "mistake" made by its [prior] commission and perpetuated thereafter. This, we cannot do.³⁸

The contraction of the red flag doctrine continued in *Andover Development Corp. v. City of New Smyrna Beach*.³⁹ In *Andover*, a landowner, relying on the rezoning of its land and on the representations of city officials, expended a large sum of money and incurred substantial financial obligations. The city's actions and the owner's reliance occurred in spite of the existence of substantial public opposition. Subsequently, through an initiative and referendum procedure, the city repealed the rezoning.⁴⁰ Stating that in *Sakolsky*, "the Florida Supreme Court candidly receded from the 'red flag doctrine,'" ⁴¹ the First District Court of Appeal in *Andover* estopped the city and held that the landowner did not have good reason to believe that the official mind would soon change.⁴² Furthermore, the court stated that the official mind did not change but instead cooperated with the landowner in attempting to pacify public protests.⁴³

Florida's judicial attitude has now taken a pro-landowner tilt; nonetheless, the red flag doctrine is not dead. Rather, the cases indicate a distinction between direct, actual notice and circumstan-

36. *Imperial*, 309 So. 2d at 573-74.

37. *Id.* at 573.

38. *Id.* at 574.

39. 328 So. 2d 231 (Fla. 1st DCA 1976).

40. *Id.* at 233.

41. *Id.* at 238.

42. *Id.*

43. *Id.*; see also *Kaeslin v. Adams*, 97 So. 2d 461 (Fla. 1957) (en banc) (existence of community protest was not sufficient to justify the county's revocation of a permit).

tial notice.⁴⁴ Pending ordinances and suits in which the landowner is directly involved constitute direct notice, but impending elections and public protest constitute circumstantial notice.⁴⁵ The Second District Court of Appeal in *Smith v. City of Clearwater*⁴⁶ reaffirmed this dichotomy. Because the city's proposed zoning changes were pending at the time of the landowner's reliance, the court in *Smith* denied the application of equitable estoppel.⁴⁷ The court, addressing the question of when government action is pending, stated:

For a zoning change to be pending within this rule, it does not have to be before the city council, provided the appropriate administrative department of the city is actively pursuing it. Of course, mere thoughts or comments by city employees concerning the desirability of a change are not enough. There must be active and documented efforts on the part of those authorized to do the work which, in the normal course of municipal action, culminate in the requisite zoning change. The city council or the applicable city planning board must at least be aware that these efforts are going forward. For a zoning change to be pending, however, it is not essential that the property owner be advised of these activities, except that to the extent that he is unaware of them, he might justifiably continue to expend funds upon his project which, if the matter does not in due time become public, may result in the application of equitable estoppel.⁴⁸

Consequently, even if the landowner is unaware of the pending action, the courts in Florida will consider pending action to be actual notice and will prevent the application of equitable estoppel where knowledge of the pending action was available to the public prior to the landowner's reliance.

44. See *Sakolsky*, 151 So. 2d at 435-36; see also *Rhodes*, *supra* note 1, at 788.

45. Apparently, a suit against the local government challenging its action would also constitute circumstantial notice if the landowner was not made a party. See *Sakolsky*, 151 So. 2d at 435-36.

46. 383 So. 2d 681 (Fla. 2d DCA 1980); see *infra* text accompanying notes 102-03, 135-38.

47. The court also denied equitable estoppel on the grounds that the landowner had not made substantial expenditures or changed his position in reliance on the city's actions. *Id.* at 686; see also *City of Hollywood v. Pettersen*, 178 So. 2d 919 (Fla. 2d DCA 1965) (rejecting the city's argument that zoning changes were pending).

48. *Smith*, 383 So. 2d at 689. In *Florida Cos. v. Orange County*, 411 So. 2d 1008, 1011 (Fla. 5th DCA 1982), the court held that the red flag doctrine is not applicable to a situation where the property owner legitimately relies on a government act which does not amount to final approval of a project, and then the county denies final approval. The court stated that it "is not required to take into account the fact that the 'official mind' might change pending the issuance of final approval." *Id.*

B. Self-Created Hardships

The courts in Florida have rejected the application of equitable estoppel in a number of situations involving a lack of good faith on the part of the landowner. Although often not explicitly referring to the lack of good faith, the cases are based on action or inaction by the landowner indicating bad faith or resulting in a "self-created hardship." These cases fall into three types of fact patterns that give rise to the issue of a "self-created hardship."

The first factual pattern, as illustrated in *Gross v. City of Miami*⁴⁹ and *Dade County v. United Resources, Inc.*,⁵⁰ involves landowners with actual knowledge that they could not yet rely on the government act.⁵¹ Relying on a city resolution transferring his liquor license to another location, the plaintiff in *Gross* subsequently obtained a building permit and made extensive alterations at the new location. Nevertheless, the county denied him a variance permit for a liquor lounge. In denying the application of equitable estoppel, the Supreme Court of Florida reasoned that good faith reliance was not possible because, before the alterations were made, the plaintiff knew or should have known of the conditional limitation of the resolution and building permit relied upon.⁵² The city transferred the liquor license to the plaintiff on the condition that the transfer "shall not otherwise be in violation of the existing zoning laws"⁵³ and issued the building permit subject to the City Commission's approval. The zoning did not permit a liquor lounge and the plaintiff did not obtain the Commission's approval.

The developers in *United Resources* relied on a Board of County Commissioners' resolution determining that the developers had vested rights in certain land, which exempted them from the Development of Regional Impact requirements.⁵⁴ Nevertheless, the

49. 62 So. 2d 418 (Fla. 1953).

50. 374 So. 2d 1046 (Fla. 3d DCA 1979).

51. For another case in which the landowner was on notice that he could not rely on a government act, see *Godson v. Town of Surfside*, 150 Fla. 614, 8 So. 2d 497 (1942). In *Godson*, a city ordinance existed which prohibited development within forty feet of the Atlantic Ocean's highwater mark. A city survey existed showing that the owner's proposed project would violate the ordinance. Thus, the owner was put on notice that he could not rely on the building permit issued to him. For further discussion of *Godson*, see *infra* notes 69-70 and accompanying text.

52. *Gross*, 62 So. 2d at 419; see also *Dade County v. Gayer*, 388 So. 2d 1292, 1293, 1295 (Fla. 3d DCA 1980) (holding that a landowner could not assert doctrine of equitable estoppel against county to sanction acts that zoning regulations prohibited).

53. *Gross*, 62 So. 2d at 418-19.

54. *United Resources*, 374 So. 2d at 1048. This determination was made in accordance with FLA. STAT. § 380.06(12) (1973) (current version, as amended, at FLA. STAT. § 380.06(18)).

Board subsequently denied the developers' application for a zoning change. The Third District Court of Appeal rejected the equitable estoppel argument because a clause in the resolution that the developers relied upon stated that the resolution "'shall not be deemed, nor is it intended, to vest rights or predetermine issues, pertaining to future applications for zoning or rezoning on the subject property.'"⁵⁵ Consequently, the court held that the developers "were clearly advised by [the county] that any vested rights . . . were subject to zoning or rezoning"⁵⁶ and "were constantly apprised of their need to secure any zoning approval change from the Commission."⁵⁷

A second factual pattern arose in three recent cases in which the courts denied the application of the doctrine because inappropriate action or inaction by the landowner, rather than good faith reliance, resulted in the landowner's hardship. In *Board of County Commissioners of Pasco County v. Hesse*,⁵⁸ the owner filed suit when the Board disapproved his site plan and denied his application for a building permit. The suit resulted in a "stipulation and agreement" between the parties allowing the landowner's condominium project to proceed. Subsequently, the Board again refused to issue a building permit. The Second District Court of Appeal noted that the Board denied the permit because the owner modified his plans. The new plan "represented a significant change from the proposal agreed to by the county"⁵⁹ in the stipulation and agreement. Thus, the court held that the doctrine of equitable estoppel was inapplicable because "[i]t was [the owner] who changed his mind; not the County."⁶⁰ Therefore, any hardship to the owner

(1983)). For provisions pertaining to the vesting of rights in relation to developments of regional impact, see FLA. STAT. § 380.06(18) (1983); see also *City of Ft. Lauderdale v. State*, 424 So. 2d 102 (Fla. 1st DCA 1982) (holding that the mere act of a city in rezoning property for an airport runway extension did not constitute authorization to commence development, and therefore, that the city's proposed extension did not possess vested-right status under statute).

55. *United Resources*, 374 So. 2d at 1050.

56. *Id.*

57. *Id.* at 1051. However, the warnings of a government body must be carefully worded if they are to be effective in preventing the application of equitable estoppel. In *Florida Cos. v. Orange County*, 411 So. 2d 1008, 1011 (Fla. 5th DCA 1982), the County Code warned that preliminary approvals of subdivision plats can be voided if substantial work is not completed within one year. Nevertheless, the court held that this was not sufficient to prevent the application of equitable estoppel because the property owner had already made substantial expenditures prior to the revocation of approval.

58. 351 So. 2d 1124 (Fla. 2d DCA 1977).

59. *Id.* at 1125.

60. *Id.* at 1126.

did not result from good faith reliance.

In *Pasco County v. Tampa Development Corp.*,⁶¹ a developer relied on an absence of zoning to incur substantial expenditures. The county then enacted a restrictive zoning ordinance and refused to issue building permits. In denying the application of equitable estoppel, the Second District Court of Appeal held that an absence of zoning was not a sufficient act or omission by the government.⁶² Significantly, the court noted that the "landowner . . . had a duty to inquire of and confer with appellant county regarding the uses of the property that would be permitted."⁶³ The landowner did not meet this duty, because he never submitted a plan or plat to the county for its approval or for any other purpose. Furthermore, the landowner never requested zoning for any of the property.⁶⁴ As a result, the reliance was not in good faith.

In *Gross v. City of Riviera Beach*,⁶⁵ a mortgagee loaned \$1,275,000 to a developer in reliance upon a building permit. After seventeen months of litigation with the developer, the mortgagee foreclosed on the uncompleted project. During that period, the building permit expired and the city revised its zoning ordinances. Thus, it became necessary for the mortgagee to seek variances, which the city denied. The Fourth District Court of Appeal rejected the application of equitable estoppel, holding that the mortgagee had not relied in good faith.⁶⁶ Despite a clause in the loan agreement allowing the mortgagee to take possession of the property and to complete the project following a cessation of construction by the developer, the mortgagee, when presented with the situation, did not make an effort to take possession and maintain or extend the building permit. Consequently, the court held that it was the mortgagee's "own inaction"⁶⁷ that created the hardship,

61. 364 So. 2d 850 (Fla. 2d DCA 1978); see *infra* notes 81-82 and accompanying text; see also *Josephson v. Autrey*, 96 So. 2d 784 (Fla. 1957) (en banc) (self-created hardship).

62. *Tampa Dev. Corp.*, 364 So. 2d at 853.

63. *Id.*

64. *Id.* at 851.

65. 367 So. 2d 648 (Fla. 4th DCA), *cert. denied*, 378 So. 2d 345 (1979).

66. *Id.* at 650.

67. *Id.* at 651. However, in *Florida Cos. v. Orange County*, 411 So. 2d 1008 (Fla. 5th DCA 1982), the court revealed that a developer's inaction will not always result in a finding of bad faith. In *Florida Cos.*, the developer relied on a preliminary approval of a subdivision plat to construct a sewage treatment plant. The County Code provided that final subdivision plans were to be submitted within one year of the preliminary plans. Several years later, because of financial problems, the developers still had not submitted the final plans, and the county passed an ordinance forbidding private sewage treatment plants. Nevertheless, the court estopped the county because it had encouraged the completion of the plant

rather than good faith reliance.

The third factual pattern is illustrated in a series of cases in which the landowner, when applying for a permit, did not supply the government body with all of the required information.⁶⁸ As a result of the missing information, the government erred in its initial action. Accordingly, the courts have held that the landowner's reliance on the government's initial action was unjustified because the failure to supply information amounted to a lack of good faith.

In *Godson v. Town of Surfside*,⁶⁹ the plaintiff started construction of a building in reliance upon a building permit issued by the town. A town ordinance prohibited building within forty feet of the ocean's highwater mark. Upon discovering that the plaintiff's construction would violate that ordinance, the town revoked the permit. The violation resulted from a shifting shoreline and the plaintiff's initial reliance on an old survey. The Supreme Court of Florida refused to estop the town, noting that the plaintiff's application for the permit contained an inaccurate "essential representation."⁷⁰ The plaintiff had supplied the town with inaccurate information regarding the distance of the proposed building from the highwater mark; therefore, the plaintiff could not rely on the town's action. In addition, a new survey completed on the plaintiff's behalf prior to the issuance of the permit gave him notice of the change in his property.

In *Jefferson National Bank v. Metropolitan Dade County*,⁷¹ the county revoked a building permit, asserting that the previous extension of the plaintiff's property into the bay was illegal. Because the landowner's application for the permit failed to indicate the position of a bulkhead line in the bay, the Third District Court of Appeal refused to estop the county. The county did not know that the construction would take place on land illegally encroach-

and held that the developers did not lack good faith simply because they did not submit a final plan. *Id.* at 1010-11.

68. See *City of Miami Beach v. 8701 Collins Ave.*, 77 So. 2d 428 (Fla. 1954) (although the plans were not complete at that time, the court did not invoke equitable estoppel because the property owner had not furnished the city with the entire plans).

69. *Godson*, 150 Fla. 614, 8 So. 2d 497 (1942); see *supra* notes 51-52 and accompanying text and *infra* notes 66-67. Separate ground for the holding in *Godson* also existed under the "general rule that a 'building permit issued in violation of law or under mistake of fact' may be rescinded although construction may have been commenced." *Godson*, 150 Fla. at 618, 8 So. 2d at 498.

70. *Godson*, 150 Fla. at 619, 8 So. 2d at 499. The permit contained the express condition that it might be "revoked at any time upon the violation of any provisions of [the town's] laws, ordinances or rules and regulations" *Id.* at 617, 8 So. 2d at 498.

71. 271 So. 2d 207 (Fla. 3d DCA 1972).

ing into the bay. Although the county may have been estopped from revoking the permit in certain circumstances, if it had known of the encroachment,⁷² the court went on to state that "one's own wrongful act ordinarily cannot serve as a basis of a claim of estoppel against another, and it can be applied as an estoppel against estoppel."⁷³ Therefore, the plaintiff's wrongful act, the failure to include the information on the bulkhead line, showed a lack of good faith and prevented it from estopping the county.

In *City of Coral Gables v. Puiggros*,⁷⁴ a plaintiff landowner relying on a city zoning board resolution and statements of city officials, expended money on construction of a single family residence. Subsequently, the city denied him a building permit. The Third District Court of Appeal remanded the case while holding that genuine issues of fact precluded a finding of equitable estoppel.⁷⁵ The open issues of fact were whether the plaintiff withheld certain information and whether that information was crucial to the passage of the resolution. If answered affirmatively, "the plaintiff [would be estopped] from claiming the benefit of an estoppel against the city."⁷⁶ Therefore, developers who fail to adequately disclose all necessary information to city officials may lose their right to subsequently argue equitable estoppel.

III. ACT OR OMISSION OF GOVERNMENT

The application of equitable estoppel requires good faith reliance on an "act or omission" of government. In most instances, the landowner bases his reliance on the issuance of a building permit. A building permit, however, is not essential for the application of the doctrine.⁷⁷ Indeed, the courts have recognized many other government acts as constituting the proper subject for reliance. Additionally, certain acts may satisfy the reliance requirement in some situations but not in others. Nevertheless, the courts have consistently held that a landowner cannot rely on an unauthorized, un-

72. *Id.* at 214.

73. *Id.*; see also *Dade County v. Bengis Assocs., Inc.* 257 So. 2d 291, 292 (Fla. 3d DCA), cert. denied, 261 So. 2d 839 (1972) (denying equitable estoppel because the plaintiff made the "initial mistake or misrepresentation").

74. 376 So. 2d 281 (Fla. 3d DCA 1979); see *infra* text accompanying notes 143-45.

75. *Puiggros*, 376 So. 2d at 284.

76. *Id.* Upon remand, the court found that the plaintiff did not withhold information; therefore, he was not estopped from claiming the benefit of estoppel against the city. *City of Coral Gables v. Puiggros*, 418 So. 2d 367 (Fla. 3d DCA 1982).

77. See, e.g., *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975).

lawful, or mistaken act of government.⁷⁸ The act or omission must be such that one has a right to rely upon it,⁷⁹ and the Florida courts have held that an absence of zoning, the existing zoning, or the existing zoning and mere application for a building permit are all acts or omissions (of acts) upon which a landowner cannot rely. Plaintiff-landowners have also asserted the following government acts, among others, as forming the basis for equitable estoppel: rezoning, site plan approval, conditional use resolution or permit, foundation permit, statements, agreements, informal actions, building permits, and unfair dealings.

A. Absence of Zoning

In *Pasco County v. Tampa Development Corp.*,⁸⁰ the Second District Court of Appeal held that an absence of zoning does not constitute an omission of government upon which the landowner can rely.⁸¹ The court stated that:

We consider it rudimentary law that an omission means a negligent or culpable omission where the party failing to act was under a duty to do so. Otherwise, silence or inaction will not operate to work an estoppel. In our view, the appellant county was under no lawful duty to act by way of zoning. Appellee is correct in pointing out that in Chapter 67-310, *Laws of Florida*, the legislature gave all counties in Florida the authority to enact comprehensive zoning. This authority, however, is not tantamount to a *duty to zone* within the facts of this case. Our reading of the record reveals no "omission" . . . sufficient to base the application of equitable estoppel in this case.⁸²

78. *Miami Shores Village v. William N. Brockway* Post No. 124, 156 Fla. 673, 678, 24 So. 2d 33, 35 (1945) (en banc); *Godson v. Town of Surfside*, 150 Fla. 614, 618, 8 So. 2d 497, 498 (1942); *Dade County v. Gayer*, 388 So. 2d 1292, 1294 (Fla. 3d DCA 1980); *Dade County v. Bengis Assocs., Inc.*, 257 So. 2d 291, 292 (Fla. 3d DCA), *cert. denied*, 261 So. 2d 839 (1972).

79. *City of Coral Springs v. Broward County*, 387 So. 2d 389, 390 (Fla. 4th DCA 1980); *Greenhut Constr. Co. v. Henry A. Knott, Inc.*, 247 So. 2d 517, 524 (Fla. 1st DCA 1971); *see also State v. Oyster Bay Estates, Inc.*, 384 So. 2d 891, 894-95 (Fla. 1st DCA 1980) (holding that "mere existence of a present right to a particular use of land, whether derived from a less restrictive zoning ordinance or no zoning ordinance at all, is not a sufficient 'act' of government upon which to base equitable estoppel").

80. 364 So. 2d 850 (Fla. 2d DCA 1978); *see supra* text accompanying notes 61-64.

81. *Tampa Dev. Corp.*, 364 So. 2d at 853; *see also Aiken v. Davis*, 106 Fla. 675, 143 So. 658 (1932) (absence of zoning); *cf. Project Home, Inc. v. Town of Astatula*, 373 So. 2d 710 (Fla. 2d DCA 1979) (absence of zoning combined with statements and informal action by the town was sufficient to support equitable estoppel).

82. *Tampa Dev. Corp.*, 364 So. 2d at 854.

Thus, despite the landowner's otherwise good faith reliance, the *Tampa Development Corp.* decision indicates a reluctance on the part of the Florida courts to apply the doctrine of equitable estoppel where that reliance was based on an absence of zoning.

B. Existing Zoning

Existing zoning alone does not create a vested right and is not an act or omission of government which the landowner can use to invoke equitable estoppel.⁸³ In *City of Gainesville v. Cone*,⁸⁴ the First District Court of Appeal held that:

An owner of property acquires no vested rights in the continuation of existing zoning or land use regulations as to such property unless matters creating an estoppel against the zoning authority have arisen. An estoppel cannot arise so as to create a vested right in a particular zoning category in the absence of the expenditure of money in compliance with the existing zoning.⁸⁵

83. The rationale for this rule was set forth in *City of Miami Beach v. 8701 Collins Ave., Inc.*, 77 So. 2d 428 (Fla. 1954). The Supreme Court of Florida stated:

This Court has never gone so far as to hold that a City will be estopped to enforce an amendment to a zoning ordinance merely because a party detrimentally alters his position upon the chance and in the faith that no change in the zoning regulations will occur. It is our view that such a doctrine would be an unwise restraint upon the police power of the government. All that one who plans to use his property in accordance with existing zoning regulations is entitled to assume is that such regulations will not be altered to his detriment, unless the change bears a substantial relation to the health, morals, welfare or safety of the public.

Id. at 430. Additionally, *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980), provides that the local government does not have to actively discourage a landowner in order to prevent the existing zoning from being a sufficient act of government. In *Smith*, the landowner relied on existing zoning and words and actions of city officials that seemed to indicate approval of his plans. Nevertheless, the court, noting that the owner had not relied on an act or omission of the city, held that equitable estoppel was inapplicable. *Id.* at 686.

84. 365 So. 2d 737 (Fla. 1st DCA 1978).

85. *Id.* at 739 (citations omitted). The court also stated:

There is no suggestion of estoppel in the record before us. It appears to be quite incongruous to suggest that while the law is clear that one may not acquire any vested right in the continuation of an existing zoning category, he may upon the filing of a petition for a new zoning category, acquire a vested right in the zoning category. Further, it is clear that a city may adopt an amendment to a land use ordinance even during pendency of a controversy and the controversy must then be determined on the basis of the law as amended. *Cone* had no vested rights to a continuation of either existing R-1A zoning or to the proposed zoning which he sought.

Id. (citation omitted); see also *Oka v. Cole*, 145 So. 2d 233, 235 (Fla. 1962) (holding that vested rights to existing zoning do not accrue to neighboring landowners); *Sarasota County v. Walker*, 144 So. 2d 345, 348 (Fla. 2d DCA 1962) (holding that "[n]o one has a vested right to require a zoning classification to remain constant, especially in an area of growth and

Upon finding that there was an "absence of the expenditure of money in compliance with the existing zoning,"⁸⁶ the court in *Cone* denied the application of equitable estoppel. Moreover, the Fourth District Court of Appeal in *Walker v. Indian River County*⁸⁷ held that the mere purchase of property in reliance on existing zoning is not a sufficient expenditure of money to invoke equitable estoppel.⁸⁸ The court noted that because the landowner must obtain both a zoning permit and a building permit before beginning construction, he could neither commence construction nor expend funds for such construction in good faith by relying solely on the existing zoning.⁸⁹ Thus, the logical extension of the holding in *Walker* is that no type of expenditure or change of position will be adequate to allow existing zoning alone to be a sufficient act or omission of government that will trigger the application of equitable estoppel. Furthermore, as the Fourth District Court of Appeal stated in *City of Fort Pierce v. Davis*,⁹⁰ "[T]he mere existence of a present right to a particular use of land, derived from a less restrictive zoning ordinance is not a sufficient 'act' of government upon which to base equitable estoppel."⁹¹

The First District Court of Appeal addressed the question of reliance on existing zoning and government acquiescence to that reliance in *Hough v. Amato*.⁹² The case shows that the doctrine of equitable estoppel may be applicable where the government has knowledge of the landowner's reliance on existing zoning and silently acquiesces. In *Hough*, the landowner invested "large sums of money, as well as time and effort, in reliance on the then-existing

changed conditions").

86. *Cone*, 365 So. 2d at 739.

87. 319 So. 2d 596 (Fla. 4th DCA 1975); see *infra* notes 115-18 and accompanying text; see also *City of Miami Beach v. 8701 Collins Ave., Inc.*, 77 So. 2d 428, 430 (Fla. 1954) (where large sums of money expended in construction, court denied equitable estoppel); *Edelstein v. Dade County*, 171 So. 2d 611, 612 (Fla. 3d DCA 1965) (expenditures of money on land must be in compliance with existing zoning).

88. *Walker*, 319 So. 2d at 599-600.

89. *Id.* at 599.

90. 400 So. 2d 1242 (Fla. 4th DCA 1981).

91. *Id.* at 1244 (citing *Pasco County v. Tampa Dev. Corp.*, 364 So. 2d 850 (Fla. 2d DCA 1978)).

92. 212 So. 2d 662 (Fla. 1st DCA 1968); see also *Texas Co. v. Town of Miami Springs*, 44 So. 2d 808 (Fla. 1950) (en banc) (equitable estoppel applicable where oil company submitted plans and received permits to construct service stations, purchased the lots, and one month later town passed emergency ordinance forbidding erection of stations within 850 feet of another station); *City of Miami v. 20th Century Club, Inc.*, 313 So. 2d 448 (Fla. 3d DCA 1975) (city's resolution created a vested right of "conditional use" zoning for private club, and club had right to rely on existing zoning when it sought expansion).

[zoning] ordinance."⁹³ Despite being advised several times of the landowner's plans, the city took no action and allowed the landowner to obtain permits to remodel his property. However, the city later refused to issue a use permit. Because the city had silently acquiesced, the court held that the city was estopped from denying the landowner a use permit and from preventing his project.⁹⁴

C. Existing Zoning and Application for Building Permit

Several landowners have attempted to rely on existing zoning at the time of a building permit application in order to claim a vested right⁹⁵ to that permit. In each case, the local government changed the zoning before issuing a permit and then denied the application. The Supreme Court of Florida held in *Broach v. Young*,⁹⁶ that generally, rights do not vest in such a situation. Accordingly, in *City of Boynton Beach v. Carroll*,⁹⁷ the Fourth District Court of Appeal stated that even though there has been a change in the zoning since the time of application, the general rule is that the zoning ordinance in effect at the time of the final decision on whether to issue the permit governs.⁹⁸ Furthermore, the court in *Carroll* commented that because Florida's established position is that vested rights cannot arise unless there is also a substantial change of position, "a mere application for a building permit cannot create a vested right,"⁹⁹ even if the new ordinance did not control. Not even the possession of a building permit creates a vested right unless the holder has first substantially changed his position.¹⁰⁰ In both *Broach* and *Carroll*, the new ordinance was pending at the time of the application for the permit.¹⁰¹ Subsequently, the Second District Court of Appeal, in *Smith v. City of Clearwater*,¹⁰² limited Florida's traditional approach to vested

93. *Hough*, 212 So. 2d at 664.

94. *Id.*

95. Although the terms are often used interchangeably, a vested right is properly claimed when no reliance or change of position has taken place, whereas an equitable estoppel claim can only be made after the landowner has detrimentally relied or changed his position in response to a government act or omission. See, e.g., *City of Boynton Beach v. Carroll*, 272 So. 2d 171, 173 (Fla. 4th DCA), cert. denied, 279 So. 2d 871 (1973).

96. 100 So. 2d 411, 413 (Fla. 1958).

97. 272 So. 2d 171 (Fla. 4th DCA), cert. denied, 279 So. 2d 871 (1973).

98. *Id.* at 172.

99. *Id.* at 173.

100. *Id.*

101. *Broach*, 100 So. 2d at 413; *Carroll*, 272 So. 2d at 172.

102. 383 So. 2d 681 (Fla. 2d DCA 1980); see *supra* notes 46-48 and accompanying text and *infra* text accompanying notes 135-38.

rights and ruled that even if the applicant:

has not made the substantial expenditures in reliance upon the city's position necessary to create an estoppel, he is still entitled to obtain a building permit which is within the provisions of existing zoning so long as the rezoning ordinance which would preclude the intended use is not pending at the time when a proper application is made.¹⁰³

Thus, in *City of Hollywood v. Pettersen*,¹⁰⁴ the court focused on the issue whether the rezoning ordinance was pending at the time when the landowner made a proper application. The city in *Pettersen* claimed that rezoning was pending because "certain actions by the city commission . . . indicated an intent to rezone,"¹⁰⁵ and because the planning and zoning board had advertised a public hearing. In rejecting the city's argument and holding that the plaintiff was entitled to a building permit, the court stated:

In the promulgation of zoning regulations there must be strict adherence to the requirements of notice and hearing preliminary to the adoption of such regulations. So-called "zoning in progress" or retroactive regulations clearly do not meet such criteria. It may be true that the surrounding property may be adversely affected, but the failure of the City to complete the process of amending its zoning ordinance does not justify adoption of retroactive zoning regulations.¹⁰⁶

Furthermore, even when an ordinance or change in zoning is pending, a city's delay or bad faith in considering a building permit application can be grounds for vested rights or equitable estoppel. In *Dade County v. Jason*,¹⁰⁷ an initiative and referendum authorized the County Manager to declare a building moratorium, preventing the issuance of building permits. The landowners had applied for and were entitled to a building permit under the existing ordinances; but the county withheld the issuance of permits until the moratorium was declared. The county then denied the

103. *Smith*, 383 So. 2d at 689.

104. 178 So. 2d 919 (Fla. 2d DCA 1965).

105. *Id.* at 920.

106. *Id.* at 921.

107. 278 So. 2d 311 (Fla. 2d DCA 1973). See also *Aiken v. Davis*, 106 Fla. 675, 143 So. 658 (1932), where the application for a building permit was made at a time when no zoning existed. The town council, however, had agreed upon a general plan of zoning. The issuance of the permit was delayed until the town could enact the zoning. Holding the enactment to be a "hasty passage," and arbitrary and unreasonable, the court ordered the town to issue the permit. *Id.* at 679, 143 So. at 659 (Ellis, J., concurring).

application for a permit based upon the moratorium. Finding that the county acted in bad faith in delaying the issuance, the Third District Court of Appeal held that the applicant was entitled to the permit.¹⁰⁸

D. Rezoning

When rezoning of a landowner's property is done at the owner's request, it is a sufficient government act upon which to base equitable estoppel. In such a situation, the local government knows that its act will induce the owner to rely. Indeed, in some cases, the government knew that the owner's change of position was specifically conditioned upon obtaining the rezoning.

However, no case has arisen concerning rezoning of a large area which included the owner's property, but which was not done at the owner's request or with knowledge that the owner would change his position. Whether such a government act is sufficient to invoke equitable estoppel is not clear. If the government rezoned the area at the request of a neighboring or nearby owner, and if the plaintiff-owner's project or plan is similar to the neighbor's project or plan, then it seems likely that equitable estoppel would apply. If not done at a neighboring owner's request, it is possible that the rezoning will be treated like existing zoning, which does not constitute a sufficient government act. Because the courts emphasize state-induced reliance in rezoning cases, it is less likely that the government will be held to have specifically induced the owner to change his position when the government had no actual knowledge of the owner's possible change of position in reliance on a government act. Nevertheless, a court might hold that a government should know that rezoning would likely induce reliance.

The Supreme Court of Florida first upheld rezoning at a property owner's request as a sufficient government act for the application of equitable estoppel in *Bregar v. Britton*.¹⁰⁹ In *Bregar*, the Board of County Commissioners knew that the landowner had made the rezoning request in order to build a drive-in theater, and that following the passage of the rezoning resolution, the landowner incurred substantial expenditures to further that goal. Consequently, the court estopped the Commissioners from later re-

108. *Jason*, 278 So. 2d at 312.

109. 75 So. 2d 753 (Fla. 1954), *cert. denied*, 348 U.S. 972 (1955); *see supra* notes 12-14 and accompanying text; *see also* *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976) (property owner[s] could rely on zoning existing at the time city issued permit[s]); *City of Gainesville v. Bishop*, 174 So. 2d 100 (Fla. 1st DCA 1965) (same).

scinding the rezoning resolution.¹¹⁰

The Second District Court of Appeal in *Town of Largo v. Imperial Homes Corp.*,¹¹¹ extended *Bregar* to allow a prospective purchaser of land to rely on rezoning that he had requested. In *Imperial*, a corporation contracted to buy land, contingent upon obtaining rezoning expressly allowing multi-family development. Subsequent to the corporation's request and the Zoning Commission's favorable recommendation, the town commission approved the rezoning and the corporation purchased the land. When the town later attempted to downzone the property to single-family zoning, the court held that the town was estopped from downzoning the property. The appellate court quoted with approval the trial judge's statement of when estoppel applies:

[E]stoppel amounts to nothing more than an application of the rules of fair play. One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon. A citizen is entitled to rely on the assurances and commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds. . . .¹¹²

Further, the court emphasized that the rezoning was done at the owner's request, and that the town knew of the owner's plans and could thus foresee detrimental reliance.

In a similar case, *Board of County Commissioners of Metropolitan Dade County v. Lutz*,¹¹³ the Third District Court of Appeal, citing both *Bregar* and *Imperial*, estopped the county from changing the property owners' rezoning after the owners had obtained the rezoning and incurred substantial expenses in reliance upon it. The court, in *Lutz*, quoting the trial court with approval, noted that the rezoning was obtained only after the owners:

110. *Bregar*, 75 So. 2d at 756.

111. 309 So. 2d 571 (Fla. 2d DCA 1975); see *supra* text accompanying notes 35-38; see also *Jones v. U.S. Steel Credit Corp.*, 382 So. 2d 48 (Fla. 2d DCA) (equitable estoppel applied where a purchase of property and a large loan for the purchase was made in reliance on requested rezoning and was done with the knowledge of the County Commissioners), *cert. denied*, 389 So. 2d 1111 (1980).

112. *Imperial*, 309 So. 2d at 573 (quoting the trial court).

113. 314 So. 2d 815 (Fla. 3d DCA 1975); see also *Andover Dev. Corp. v. City of New Smyrna Beach*, 328 So. 2d 231 (Fla. 1st DCA) (property owner could rely on existing zoning where the city had cooperated to pacify public protests), *cert. denied*, 341 So. 2d 290 (1976); *City of N. Miami v. Margulies*, 289 So. 2d 424 (Fla. 3d DCA 1974) (although a subsequent city charter amendment limited density to 25 units per acre, a property owner could rely on rezoning and conditional use permit issued for plans calling for 33.2 units per acre).

had negotiated, planned and fulfilled county requirements in activities lasting over one year. In a day and age when governmental restrictions and requirements pertaining to land development are extraordinarily extensive and zoning classifications allowing development are granted grudgingly and after exhaustive efforts by a developer, government may not casually ignore the individual landowner's rights when formulating large-scale zoning plans.¹¹⁴

E. Site Plan Approval

In *Walker v. Indian River County*,¹¹⁵ the Fourth District Court of Appeal held that site plan approval by a county is not a sufficient act to allow good faith reliance.¹¹⁶ Yet, the extent of the holding is not entirely clear. In *Walker*, the landowner contracted to purchase property contingent upon the county's approval of a site plan for construction of a motel on that property. As a result of the county's approving the site plan, the landowner purchased the property, but he did not commence construction or expend funds in anticipation of construction. When the county thereafter downzoned the property to single-family residential, the court in *Walker* refused to estop the county and held that the mere purchase of the land—the landowner's only reliance on the site plan approval—was insufficient to invoke equitable estoppel.¹¹⁷ The court did not confront the situation where further expenses were incurred in reliance on the site plan beyond the mere purchase of property. The court, however, indicated that the incurring of further expenses in reliance on the site plan would not be justified, because a zoning permit and a building permit were still required before construction could begin.¹¹⁸

114. *Lutz*, 314 So. 2d at 816.

115. 319 So. 2d 596 (Fla. 4th DCA 1975); see *supra* text accompanying notes 87-89; see also *Andover Dev. Corp v. City of New Smyrna Beach*, 328 So. 2d 231 (Fla. 1st DCA) (property owner could rely on approval of preliminary development plans), *cert. denied*, 341 So. 2d 290 (1976).

116. *Walker*, 319 So. 2d at 599.

117. *Id.* at 599-600.

118. The court in *Walker* distinguished *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571 (Fla. 2d DCA 1975), and *Board of County Comm'rs of Metro. Dade County v. Lutz*, 314 So. 2d 815 (Fla. 3d DCA 1975), on the basis of an "[in]sufficient showing of any reliance by [the owner] upon the original [motel] zoning which resulted in a substantial change of position by him." *Walker*, 319 So. 2d at 600.

F. Conditional Use Resolution or Permit

The Third District Court of Appeal has held that the passage of a conditional use resolution or the issuance of a conditional use permit is an adequate government act to support the application of equitable estoppel. In *City of Miami v. Florida East Coast Railway*,¹¹⁹ the railroad relied on the city's resolution authorizing the issuance of a building permit upon satisfaction of certain conditions. After the railroad relied on that resolution and satisfied the conditions, the city attempted to impose additional conditions before issuing the permit. The Third District Court of Appeal held that the city was estopped from creating new conditions after the railroad had already met the conditions created in the first resolution.¹²⁰ Similarly, in *City of North Miami v. Margulies*,¹²¹ the city issued the landowner a conditional use permit authorizing the issuance of a building permit upon the fulfillment of certain conditions. The landowner incurred extensive expenses and obligations in meeting those conditions. Subsequently, the city approved a charter amendment limiting density to twenty-five units per acre, an amount less than that called for in the landowner's plans; and thus, the city council refused to authorize a building permit. Agreeing with the trial court that the owner had a right to rely on the city's actions and that it would be inequitable to deny the permit, the Third District Court of Appeal in *Margulies* held the city was estopped from denying the permit.¹²²

G. Foundation Permit

According to the Supreme Court of Florida in *O.P. Corp. v. Village of North Palm Beach*,¹²³ the issuance of a foundation permit is a sufficient government act to support the application of eq-

119. 286 So. 2d 253 (Fla. 3d DCA 1973).

120. *Id.* at 254.

121. 289 So. 2d 424 (Fla. 3d DCA 1974); *see also* *City of Miami v. 20th Century Club, Inc.*, 313 So. 2d 448 (Fla. 3d DCA 1975). After obtaining a conditional use resolution and a building permit, and satisfying parking and landscaping conditions, the property owner in *20th Century Club, Inc.* completed the building. When he later sought to expand the building, the court estopped the city from requiring the owner to seek another conditional use resolution and held that the owner could rely on the existing zoning, as long as the conditions were also met in connection with the expansion. *Id.* at 449.

122. *Margulies*, 289 So. 2d at 426.

123. 278 So. 2d 593 (Fla. 1973); *cf.* *City of Naples v. Crans*, 292 So. 2d 58 (Fla. 2d DCA 1974) (where city issued a foundation permit and agreed to issue a building permit if expressed condition met, the city was estopped from denying the permit once the condition was met).

uitable estoppel. In *O.P. Corp.*, the village accepted a fee from the landowner and issued a foundation permit, and the owner expended \$64,000 in reliance thereon. Consequently, the court estopped the village from denying the final building permit.¹²⁴

Although the issuance of a foundation permit may estop a government from preventing completion of a project, it will not necessarily estop the government from modifying the project by amendments to the zoning regulations. In *City of Miami Beach v. 8701 Collins Ave., Inc.*,¹²⁵ a property owner planned a large hotel with a basement shopping area. Under the then existing zoning, all of the contemplated shops were conforming uses. Upon completion of the foundation plans, the owner obtained a building permit for the foundation and commenced construction, incurring substantial expenditures and obligations. Subsequently, amended use regulations went into effect,¹²⁶ thereby making some of the owners' intended uses nonconforming. The Supreme Court of Florida denied the application of equitable estoppel, noting that the plans were incomplete when the city issued the foundation permit and that the landowner did not advise the city of the intended uses. The court stated: "The City, therefore, cannot be deemed to have sanctioned appellee's plans for the basement area by the mere issuance of the foundation permit for the hotel."¹²⁷

In an effort to prevent the application of equitable estoppel, a city presented a similar argument in *Sakolsky v. City of Coral Gables*.¹²⁸ In *Sakolsky*, the landowner planned a high-rise apartment building. The landowner obtained a majority vote of the city Commission, which the zoning code required in order to obtain a permit for any apartment building higher than three stories. The city public works department then issued a foundation permit, and the landowner thereupon materially changed his position and incurred substantial expenses. Subsequently, the city passed an ordinance rescinding the foundation permit, arguing that estoppel did not apply because the permit contained no height description of the building.¹²⁹ The Supreme Court of Florida rejected the argument. Since the city issued the permit after the landowner had obtained

124. *O.P. Corp.*, 278 So. 2d at 595.

125. 77 So. 2d 428 (Fla. 1954).

126. It is unclear from the opinion whether the amendments were promulgated prior to issuing the permit.

127. *Id.* at 430.

128. 151 So. 2d 433 (Fla. 1963); see *supra* text accompanying notes 24-38 and *infra* text accompanying notes 212-13.

129. *Sakolsky*, 151 So. 2d at 434 n.6.

the Commission's permission for a high-rise, the court interpreted the permit as authorizing the construction as planned. Consequently, the permit "can have no other purpose than to authorize action by the permittee in reliance on its terms."¹³⁰

H. *Statements, Agreements, and Informal Actions*

Specific statements or representations, including agreements and informal actions, of government officials inducing a property owner to rely thereon and to materially change his position are sufficient government acts for the application of equitable estoppel. The foremost case in this area is *City of Naples v. Crans*.¹³¹ In *Crans*, after the property owner had received substantial approval of his proposed project, the city declared a ninety-day moratorium on construction. The Building and Zoning Administration told the owner that because the project had complied with city requirements before the moratorium, and had received substantial approval, the city would issue a building permit. Relying on the administrator's statements, the owner incurred substantial obligations and expenses. Later, after the city refused to issue the permit, the Second District Court of Appeal held that the owner justifiably relied on the statements and that the city was equitably estopped from denying the building permit.¹³²

In an earlier case, *Alderman v. Stevens*,¹³³ the same court reached a similar conclusion. The Building Inspector and the

130. *Id.* at 436.

131. 292 So. 2d 58 (Fla. 2d DCA 1974); *see also* O.P. Corp. v. Village of N. Palm Beach, 278 So. 2d 593 (Fla. 1973) (court estopped village from claiming commercial zoning ordinance was invalid due to deficiency in notice requirement, where the village had issued a foundation permit, accepted and retained substantial fees for the foundation and final building permits, and represented to owner that land was zoned for commercial use); Texas Co. v. Town of Miami Springs, 44 So. 2d 808 (Fla. 1950) (en banc) (court estopped town from enforcing alleged emergency ordinance preventing construction of gasoline stations because of reliance on information and authorization by town officials); Frink v. Orleans Corp., 159 Fla. 646, 32 So. 2d 425 (1947) (court compelled town to zone property as town had agreed); City of Coral Gables v. Puiggros, 376 So. 2d 281 (Fla. 3d DCA 1979) (city officials' statements and actions sufficient to induce property owner's reliance); Andover Dev. Corp. v. City of New Smyrna Beach, 328 So. 2d 231 (Fla. 1st DCA) (property owner reasonably relied on city's approval of preliminary plans and on city's cooperation to pacify public protests), *cert. denied*, 341 So. 2d 290 (1976); Town of Largo v. Imperial Homes Corp., 309 So. 2d 571 (Fla. 2d DCA 1975) (court estopped town from rezoning to prevent developer's intended use, because of reliance on town officials' statements); *In re Guardianship of Irving*, 297 So. 2d 331 (Fla. 2d DCA 1974) (nursing home reasonably relied on state agency's representations regarding payment for hospital services in order to collect such payment).

132. *Crans*, 292 So. 2d at 59.

133. 189 So. 2d 168 (Fla. 2d DCA 1966).

Board of Adjustment of Tarpon Springs did not agree on the size of a setback required for a certain homeowner to build an accessory building. The Board told the homeowner that it would take no official action if the homeowner complied with the Inspector's decision. Relying on the Board's statements, the homeowner commenced construction. When the Board later attempted to stop the construction, the court held that the Board was estopped from halting the construction. Significantly, the court noted that government acts that can be relied on include "[w]ords and admissions or conduct, acts and acquiescence, or all combined, causing another person to believe in the existence of a certain state or [sic] things."¹³⁴

The landowner, however, cannot properly rely on a government's act or omission where the government was noncommittal in its response to the landowner's proposed project. Thus, in *Smith v. City of Clearwater*,¹³⁵ the Second District Court of Appeal held that where landowners had spent considerable time in negotiations with city officials who did not discourage the proposed project, there was no act or omission by the city upon which the landowners could rely. Instead, there was only "some general 'foot dragging' "¹³⁶ by the city and an "optimistic interpretation" of the city officials' words by the landowners.¹³⁷ Further, the court stated that a "lack of discouragement on the part of the city did not equal the active official encouragement upon which [a landowner] could have legally relied."¹³⁸

Additionally, equitable estoppel is not applicable where a landowner relies on the unauthorized statements of government officials. In *Greenhut Construction Co. v. Henry A. Knott, Inc.*,¹³⁹ the First District Court of Appeal denied the application of equitable estoppel when a landowner relied on the response of the Bureau Chief of Florida's Department of General Services to a complex question of law. Although the Chief was qualified in the fields of architecture and engineering, the court stated that he lacked the necessary qualifications to render an authoritative legal response to

134. *Id.* at 170 (quoting 12 Fla. Jur. Estoppel & Waiver § 24 (1957)).

135. 383 So. 2d 681 (Fla. 2d DCA 1980); *see supra* notes 46-49 and accompanying text and text accompanying notes 102-03.

136. *Id.* at 686.

137. *Id.* at 685 (quoting the trial court).

138. *Id.* at 685-86 (quoting the trial court).

139. 247 So. 2d 517 (Fla. 1st DCA 1971); *cf.* *Department of Revenue v. Hobbs*, 368 So. 2d 367 (Fla. 1st DCA) (plaintiff could not rely on administrative officer's mistaken statements of law), *appeal dismissed*, 378 So. 2d 345 (1979).

the inquiry. Thus, the court held that the landowner had no right to rely on the Chief's opinion.¹⁴⁰

The Fourth District Court of Appeal in *City of Coral Springs v. Broward County*¹⁴¹ extended the reasoning in *Greenhut* to situations where an authorized city employee makes an erroneous statement. In *City of Coral Springs*, an employee in the city's finance department told a potential purchaser of a certain parcel of property that there were no liens or claims on the property. The potential purchaser specifically advised the employee of the purpose of his inquiry. Thereafter, the purchase was completed, and the city attempted to enforce a lien that it held on the property. The court estopped the city from enforcing the lien, noting that because it was part of the employee's regular duties to furnish such information, the purchaser had a right to rely on the information given.¹⁴²

The Third District Court of Appeal reached a different conclusion in *City of Coral Gables v. Puiggros*.¹⁴³ In *Puiggros*, the court espoused the general rule that a government act which is unauthorized or based on a material mistake of fact cannot serve as a basis for equitable estoppel.¹⁴⁴ Nevertheless, the two cases are distinguishable. In *Puiggros*, a landowner incurred expenses in reliance on statements of the city's zoning administrator. When the city later refused to issue a building permit, the owner attempted to invoke the doctrine of equitable estoppel against the city. The court refused and remanded because of the possibility that the city official's statements were based on a material mistake of fact.¹⁴⁵ Significantly, while the city caused the mistake in *City of Coral Springs*, the landowner may have caused the mistake of fact in *Puiggros*.

Agreements and oral contracts reached with local governments will also suffice as government acts. In *Killearn Properties, Inc. v. City of Tallahassee*,¹⁴⁶ a subdivision developer agreed to purchase electricity for its project from the city in return for the city's

140. *Greenhut*, 247 So. 2d at 524.

141. 387 So. 2d 389 (Fla. 4th DCA 1980).

142. *Id.* at 390. *But see* *Enderby v. City of Sunrise*, 376 So. 2d 444 (Fla. 4th DCA 1979). There, the city provided water and sewer service to an apartment building under a mistaken lower rate structure than required. The apartment owner based his rent on these rates. Nevertheless, the court refused to estop the city from collecting the difference 18 months later. Even though the appropriate city official gave the incorrect rate, the court still held the act to be unauthorized and unlawful. *Id.* at 445.

143. 376 So. 2d 281 (Fla. 3d DCA 1979); *see supra* text accompanying notes 74-76.

144. *Puiggros*, 376 So. 2d at 284.

145. *Id.*

146. 366 So. 2d 172 (Fla. 1st DCA 1979).

agreement to supply free streetlights. The First District Court of Appeal estopped the city from reneging on its agreement.¹⁴⁷ Noting that the City Commission authorized the agreement, the court held that the doctrine of estoppel overcame any objections by the city that there was no formal contract or that proper formalities and procedures had not been followed.¹⁴⁸ The court noted that a city cannot purposefully fail to comply with the proper prerequisites to the execution of a contract, enjoy the benefits of that contract, and then arbitrarily choose to ignore it.¹⁴⁹

Nevertheless, if the agreement itself is unlawful or "ultra vires," the court will not invoke the doctrine of estoppel. In *United Sanitation Services of Hillsborough, Inc. v. City of Tampa*,¹⁵⁰ city officials orally agreed with a private garbage collector not to enforce a city garbage collection ordinance. Although the private collector relied to his detriment on the agreement, the Second District Court of Appeal refused to estop the city from enforcing the ordinance. The court reasoned that city officials, including the mayor and the head of the Sanitation Department, had no authority to agree to nonenforcement of a valid ordinance; therefore, the agreement was unlawful.¹⁵¹

In a similar case, *Edwards v. Town of Lantana*,¹⁵² the Supreme Court of Florida refused to estop a town from breaching an agreement with subdividers. The agreement, stated in a letter from the mayor and acted upon by the town council, allowed the subdivider to erect ornamental markers on town land. In return, the subdividers would pave the street and lay water mains. The court held that the town acted beyond its prescribed powers in allowing the use of public property for a private purpose.¹⁵³ Even though the developers had detrimentally relied on the agreement, the court reasoned that because the agreement was ultra vires, it was void. Thus, the town did not have to honor its agreement.

Informal zoning methods utilized by a local government, including statements and letters, may also provide a sufficient government act upon which to base equitable estoppel. In *Project Home, Inc. v. Town of Astatula*,¹⁵⁴ the town had no formal zoning

147. *Id.* at 180, 182.

148. *Id.* at 177-78.

149. *Id.* at 179-80.

150. 302 So. 2d 435 (Fla. 2d DCA 1974).

151. *Id.* at 438.

152. 77 So. 2d 245 (Fla. 1955).

153. *Id.* at 246.

154. 373 So. 2d 710 (Fla. 2d DCA 1979).

procedures. A corporation seeking to purchase and develop a parcel of land in the town exchanged letters with the town clerk. After authorization from the town council, the clerk advised the corporation that the parcel had the desired zoning and that there were no restrictions applicable to the project. Following the purchase of the property, the clerk informed the owner that permits would be readily available. When the town subsequently refused to issue the permits, the Second District Court of Appeal held that the government's acts were sufficient to invoke the doctrine of equitable estoppel. The court stated that "[i]f 'acts or omissions' are strictly construed to mean formal zoning, [the town] would be insulated from application against it of the doctrine of equitable estoppel simply because it had no formal zoning procedures at the time."¹⁵⁵ Consequently, "the town's informal methods of dealing with the public, acts such as letters from the town clerk, coupled with the town's inaction after being informed of [the plans], provide the necessary elements to raise equitable estoppel."¹⁵⁶

I. *Building Permits*

The issuance of a building permit is the most common government act used by courts to justify the application of equitable estoppel. Generally, a building permit is the last step necessary before actual construction begins. Consequently, it is appropriate and expected that a landowner will change his position after obtaining such a permit. The Supreme Court of Florida agreed with this view in *Texas Co. v. Town of Miami Springs*.¹⁵⁷ In *Texas Co.*, a landowner relied on the issuance and renewal of several building permits and completed the construction of a gasoline service station. After completion, the city attempted to prohibit the opening and operation of the station. In estopping the city, the court noted the owner's justifiable reliance and change of position and stated that the permits represented official permission to proceed. Therefore, the court estopped the city from attempting to repudiate what it had "quite properly done, there having been . . . no im-

155. *Id.* at 712.

156. *Id.* at 713.

157. 44 So. 2d 808 (Fla. 1950) (en banc); see also *Hough v. Amato*, 212 So. 2d 662 (Fla. 1st DCA 1968) (court equitably estopped city where plaintiff incurred expenses in reliance on building permits); *Alderman v. Stevens*, 189 So. 2d 168 (Fla. 2d DCA 1966) (court equitably estopped city where city had led builder to believe that he could rely on terms of building permits); *City of Gainesville v. Bishop*, 174 So. 2d 100 (Fla. 1st DCA 1965) (court equitably estopped city from revoking building permit where plaintiff relied on city's rezoning).

pediment to the issuance of the permits at that time."¹⁵⁸

Although the City Council apparently authorized the permits in *Texas Co.*, the Third District Court of Appeal, in *City of Hialeah v. Allmand*,¹⁵⁹ made it clear that such authorization is not necessary in order to apply equitable estoppel. Accordingly, the court in *Allmand* rejected the city's argument that the mere "ministerial act of its public works director"¹⁶⁰ in issuing a permit was insufficient to invoke the doctrine of equitable estoppel. Furthermore, the Supreme Court of Florida, in *Frink v. Orleans Corp.*,¹⁶¹ indicated that a sufficient government act may exist even where the city council has simply approved the issuance of a permit and has not yet issued the permit. Of course, if there has been no change of position in reliance on the permit by the owner, there can be no equitable estoppel, or even a vested right, arising from a building permit.¹⁶² Further, if there is a pending ordinance or litigation at the time of issuance that would prevent issuance,¹⁶³ or if the permit has been allowed to expire,¹⁶⁴ then a building permit may not be sufficient to invoke estoppel even if a substantial change of position has occurred.¹⁶⁵

Courts in Florida have also denied the application of equitable estoppel where the permit is issued in violation of law, or under a mistake of fact. This is true even where the permit holder has incurred substantial expenses and obligations. In the first such case, *Godson v. Town of Surfside*,¹⁶⁶ the Supreme Court of Florida

158. *Texas Co.*, 44 So. 2d at 809.

159. 207 So. 2d 9 (Fla. 3d DCA 1968).

160. *Id.* at 10.

161. 159 Fla. 646, 656, 32 So. 2d 425, 430 (1947).

162. See *City of Boynton Beach v. Carroll*, 272 So. 2d 171 (Fla. 4th DCA), *cert. denied*, 279 So. 2d 871 (1973); *State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA (1958)); see also *infra* text accompanying notes 206-08. But see *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976) (equitable estoppel may still apply where government's bad faith causes the lack of change of position).

163. *Sharrow v. City of Dania*, 83 So. 2d 274 (Fla. 1955); *City of Miami v. State*, 132 So. 2d 474 (Fla. 3d DCA 1961); *State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).

164. *Gross v. City of Riviera Beach*, 367 So. 2d 648 (Fla. 4th DCA), *cert. denied*, 378 So. 2d 345 (1979). But see *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976) (equitable estoppel invoked because the permit was held to have lapsed not from fault of the owner, but from delay caused by the city).

165. A landowner may, however, have the right to the issuance of a permit if he has met all the requirements and there is no pending action which would prohibit its issuance. *Broach v. Young*, 100 So. 2d 411 (Fla. 1958); *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980); *Dade County v. Jason*, 278 So. 2d 311 (Fla. 3d DCA 1973). But see *Metro. Dade County v. Rosell Constr. Corp.*, 297 So. 2d 46 (Fla. 3d DCA 1974).

166. 150 Fla. 614, 8 So. 2d 497 (1942); see *supra* text accompanying notes 69-70.

stated: "[w]e recognize it as the general rule that a 'building permit issued in violation of law or under mistake of fact' may be rescinded although construction may have been commenced."¹⁶⁷ In *Godson*, the owner was constructing a building in violation of an ordinance requiring a certain setback from the ocean. The town issued the permit under a mistake of fact as to the distance from the ocean to the building. As a result, the court refused to estop the city from cancelling the permit.

The Third District Court of Appeal, in *Dade County v. Gayer*,¹⁶⁸ applied the same principle in denying an action for equitable estoppel. The landowners in *Gayer* relied on a building permit to build a wall around their residence, but the wall illegally extended into a publicly owned right-of-way. The Board of County Commissioners then ordered the wall's removal. In denying the owner's request for estoppel, the court noted that estoppel does not apply in transactions forbidden by statute or contrary to public policy and stated:

While at first blush it seems that the application of the rule may be harsh, it would be inconceivable that public officials could issue a permit, either inadvertantly, through error, or intentionally, by design which would sanction a violation of an ordinance adopted by the legislative branch of the government.¹⁶⁹

J. *Unfair Dealings*

Many cases involve the element of unfair dealing on the part of the government. In these cases, the government's act or omission constituting an unfair dealing is sufficient to support the application of equitable estoppel. Unfair dealings vary from intentional delay or inaction¹⁷⁰ and misleading action,¹⁷¹ to arbitrary

167. *Id.* at 618, 8 So. 2d at 498 (citing 9 Am. Jur. Buildings § 8 (1937)).

168. 388 So. 2d 1292 (Fla. 3d DCA 1980); *see also* *City of Miami Beach v. Meiselman*, 216 So. 2d 774 (Fla. 3d DCA 1968); *Abenkay Realty Corp. v. Dade County*, 185 So. 2d 777 (Fla. 3d DCA 1966).

169. *Gayer*, 388 So. 2d at 1294.

170. *See* *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976) (delay and unfair dealing); *Texas Co. v. Town of Miami Springs*, 44 So. 2d 808 (Fla. 1950) (*en banc*) (inaction and arbitrary action); *Project Home, Inc. v. Town of Astatula*, 373 So. 2d 710 (Fla. 2d DCA 1979) (inaction). For cases holding that the local government cannot unreasonably delay or refuse to issue a building permit, *see* *Broach v. Young*, 100 So. 2d 411 (Fla. 1958); *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980); *Dade County v. Jason*, 278 So. 2d 311 (Fla. 3d DCA 1973). However, there must be actual delay on the part of the government and not mere "footdragging." *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980).

action and general bad faith.¹⁷²

The unfair dealing concept was set forth in *Hollywood Beach Hotel Co. v. City of Hollywood*.¹⁷³ In *Hollywood Beach*, the plaintiffs obtained a building permit to develop their property into a residential community. The City Commission then petitioned the Zoning Board to rezone parts of the property. Because the rezoning would prevent the project, the owners brought an injunctive action. The Commission responded by extending the permit indefinitely until the litigation was completed. The Commission also tabled the rezoning proposal, and it remained tabled for almost one year. Suddenly, without prior notice to the owners, the Commission rescinded the extension of the permit and mandated that the construction begin within ninety days. The court stated that the city had waited until a time of "unstable economic and financial conditions"¹⁷⁴ to order the construction. Beginning construction at that time was impossible; thus, the permit was useless. The city then negotiated to buy the property and reached an apparent understanding with the owners. Soon after, again without prior notice to the owners, the city decided not to purchase the property. After reviewing these actions, the Supreme Court of Florida held that the owners had not voluntarily allowed their permit to lapse and that the city was estopped from preventing the completion of the development.¹⁷⁵ The court stated:

Every citizen has the right to expect that he will be dealt with fairly by his government. "Unfair dealing" by a municipality can also serve as the basis for the invokement of equitable estoppel. While a City Commission certainly possesses the pre-

171. See *O.P. Corp. v. Village of N. Palm Beach*, 278 So. 2d 593 (Fla. 1973) (misleading actions and unfairly taken benefits from the owner); *City of N. Miami v. State*, 308 So. 2d 558 (Fla. 3d DCA 1975) (concealed facts and misleading actions); *Alderman v. Stevens*, 189 So. 2d 168 (Fla. 2d DCA 1968) (misleading actions).

172. *Aiken v. Davis*, 106 Fla. 675, 143 So. 658 (1932) (unreasonable, arbitrary, and hasty action); *Bruce v. City of Deerfield Beach*, 423 So. 2d 404 (Fla. 4th DCA 1982) (bad faith and misleading action; also holding that equitable estoppel under these facts is an exception to the doctrine of exhaustion of administrative remedies); *Killearn Prop., Inc. v. City of Tallahassee*, 366 So. 2d 172 (Fla. 1st DCA 1979) (unfairly taking benefits from the owner); *City of Miami v. Florida E. Coast Ry.*, 286 So. 2d 253 (Fla. 3d DCA 1973) (unfair dealing); *City of Hollywood v. Petterson*, 178 So. 2d 919 (Fla. 2d DCA 1965) (same); see also *City of Miami v. State*, 132 So. 2d 474 (Fla. 3d DCA 1961) (no bad faith by the government).

173. 329 So. 2d 10 (Fla. 1976); see Rhodes, Haigler & Brown, *Land Use Controls*, 31 U. MIAMI L. REV. 1083, 1098-99 (1977); see also *City of Jacksonville v. Wilson*, 157 Fla. 828, 27 So. 2d 108 (1964) (bad faith and unfair dealing is a valid ground for equitable estoppel). For further discussion of *Hollywood Beach*, see *infra* text accompanying notes 214-17.

174. *Hollywood Beach*, 329 So. 2d at 15.

175. *Id.* at 17-18.

rogative of deciding to defer action on such a proposal over a long period of time, it must assume the attendant responsibility for the adverse effect it knows or should know its deliberate inaction will have upon the parties with whom it is dealing. In the instant case, the course of inaction chosen by the City and its subsequent arbitrary actions must necessarily be equated with "unfair dealing."¹⁷⁶

K. Other Government Acts

Florida courts have also considered other government acts in relation to the doctrine of equitable estoppel. These other government acts include court orders, comprehensive plans, resolutions, special exceptions, and in one case,¹⁷⁷ a permit to construct a navigation channel. At least one court has held that a court order is a sufficient act upon which a landowner may properly rely.¹⁷⁸ However, any deviation from the requirements of the court order may justify a refusal to invoke the doctrine.¹⁷⁹ A government's comprehensive development plan confers no vested rights and will not suffice as an act on which to base the doctrine,¹⁸⁰ nor will a permit authorizing the construction of a navigation channel estop a government from preventing further development of land adjacent to the channel.¹⁸¹ A city or county resolution, on the other hand, is generally an adequate government act for equitable estoppel,¹⁸² as

176. *Id.* at 18 (citations omitted) (emphasis added).

177. *State v. Oyster Bay Estates, Inc.*, 384 So. 2d 891 (Fla. 1st DCA 1980); see *infra* note 183 and accompanying text.

178. *In re Guardianship of Irving*, 297 So. 2d 331 (Fla. 2d DCA 1974).

179. *Board of County Comm'rs. of Pasco County v. Hesse*, 351 So. 2d 1124 (Fla. 2d DCA 1977).

180. *City of Gainesville v. Cone*, 365 So. 2d 737 (Fla. 1st DCA 1978).

181. *State v. Oyster Bay Estates, Inc.*, 384 So. 2d 891 (Fla. 1st DCA 1980). In *Oyster Bay*, a landowner obtained a permit authorizing the construction of a navigation channel adjacent to his property. The owner planned a subdivision including a system of inland canals connecting to the channel. Following the obtainment of the permit and substantial expenditures, new legislation was passed requiring additional permits for the canals. The State denied these permits. The owner then contended that the Department of Environmental Regulation was estopped to deny the permits. The court in *Oyster Bay* rejected this contention, noting that the government agency issuing the original permit only had authority over navigable waters and not over the canals. *Id.* at 892. Despite the substantial change of position by the owner, the court held that there was no vesting of development rights. *Id.* at 894-95.

182. See, e.g., *Frink v. Orleans Corp.*, 159 Fla. 646, 32 So. 2d 425 (1947); *City of Miami v. 20th Century Club, Inc.*, 313 So. 2d 448 (Fla. 3d DCA 1975); *City of Miami v. Florida E. Coast Ry.*, 286 So. 2d 253 (Fla. 3d DCA 1973). But see *Dade County v. United Resources, Inc.*, 374 So. 2d 1046 (Fla. 3d DCA 1979) (resolution was not sufficient to invoke equitable estoppel or find vested rights, because the plaintiff did not rely upon the resolution in its

is a special exception granted at the request of a property owner.¹⁸³

IV. CHANGE OF POSITION

The third element of the doctrine of equitable estoppel requires a property owner to make "such a substantial change in position or [to incur] such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he acquired."¹⁸⁴ Further, the change of position or expenses incurred must be induced by the local government¹⁸⁵ and must be within the scope authorized by the government act.¹⁸⁶ Nevertheless, the courts have decided few cases on the basis of this element, because almost every landowner who has sought the application of equitable estoppel has adequately changed his position.

Landowners have asserted various types of changes of position in support of this element. Expenses incurred for construction, planning, permitting, designing, engineering and surveying; purchasing property; the exercising of options to purchase; preparing property for construction; purchasing materials; taking out loans; meeting conditions; making improvements and repairs; and incurring other obligations have all been utilized in various combinations in seeking the application of equitable estoppel. It is clear that actual construction or physical changes to the land are not required.¹⁸⁷ In addition, the reliance does not have to come after the final necessary authorization by the government.¹⁸⁸ Nevertheless, the mere purchase of land is not sufficient¹⁸⁹ (but the purchase of land with the knowledge and encouragement of the local government may suffice).¹⁹⁰ Finally, a subsequent owner may

intended manner).

183. *City of Tamarac v. Siegel*, 399 So. 2d 1124 (Fla. 4th DCA 1981).

184. *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15-16 (Fla. 1976) (quoting *Sakolsky v. City of Coral Gables*, 151 So. 2d 433 (Fla. 1963)).

185. *Alderman v. Stevens*, 189 So. 2d 168 (Fla. 2d DCA 1966).

186. *Rhodes*, *supra* note 1, at 790; *see, e.g.*, *City of Miami Beach v. 8701 Collins Ave.*, 77 So. 2d 428 (Fla. 1954); *State v. Oyster Bay Estates, Inc.*, 384 So. 2d 891 (Fla. 1st DCA 1980).

187. *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15 (Fla. 1976); *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975).

188. *See, e.g.*, *Board of County Comm'rs of Dade County v. Lutz*, 329 So. 2d 10 (Fla. 1976); *City of N. Miami v. Margulies*, 289 So. 2d 424 (Fla. 3d DCA 1974).

189. *City of Miami Beach v. 8701 Collins Ave.*, 77 So. 2d 428 (Fla. 1954); *Lambros, Inc. v. Town of Ocean Ridge*, 392 So. 2d 993 (Fla. 4th DCA 1981); *Walker v. Indian River County*, 319 So. 2d 596 (Fla. 4th DCA 1975); *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571 (Fla. 2d DCA 1975); *Edelstein v. Dade County*, 171 So. 2d 611 (Fla. 3d DCA 1965).

190. *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975).

utilize a previous owner's change of position, and in some cases, a party who is not the actual owner of the property may invoke equitable estoppel.¹⁹¹

The amount of change in position or expenses and obligations incurred is not particularly important and many cases do not even address the issue of the extent of reliance. Although the landowner must demonstrate some change of position, the burden is not heavy and actual expenditures are not necessarily required.¹⁹² Many property owners have also argued that they had a vested right in some permit or condition, even with no change in position. The courts, however, have clearly ruled that there can be no vested right or equitable estoppel without an expenditure of money or other change in position.¹⁹³

The amount of expenses specifically held to be sufficient to invoke equitable estoppel varies greatly—in one case the amount was a mere \$1,037¹⁹⁴ and in another it was \$650,000.¹⁹⁵ In typical cases, the amount of expenses incurred ranges between \$20,000 and \$200,000.¹⁹⁶ Nonetheless, even a substantial expenditure will not insure that the property owner will prevail if the other two elements of equitable estoppel are not satisfied. Accordingly, in *Gross v. City of Riviera Beach*,¹⁹⁷ the expenditure of \$1,275,000 was irrelevant because the landowner failed to meet the first element when he created his own hardship and consequently lacked good faith reliance. Similarly, in *Pasco County v. Tampa Develop-*

191. *Florida Cos. v. Orange County*, 411 So. 2d 1008 (Fla. 5th DCA 1982); *City of Tamarac v. Siegel*, 399 So. 2d 1124 (Fla. 4th DCA 1981); *Jones v. U.S. Steel Credit Corp.*, 382 So. 2d 48 (Fla. 2d DCA), *cert. denied*, 389 So. 2d 1111 (1980); *City of Gainesville v. Bishop*, 174 So. 2d 100 (Fla. 2d DCA 1965); *see also Sakolsky v. City of Coral Gables*, 151 So. 2d 433 (Fla. 1963) (plaintiff held an option to purchase land).

192. It is possible that equitable estoppel can be invoked without the expenditure of a single dollar. *JUERGENSMEYER & WADLEY*, *supra* note 1 at § 5.5; *see, e.g., Killearn Prop., Inc. v. City of Tallahassee*, 366 So. 2d 172 (Fla. 1st DCA 1979) (landowner's only change of position was discontinuance of negotiations with other parties).

193. *City of Boynton Beach v. Carroll*, 272 So. 2d 171 (Fla. 4th DCA), *cert. denied*, 279 So. 2d 871 (1973); *Edelstein v. Dade County*, 171 So. 2d 611 (Fla. 3d DCA 1965); *State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958) (mere purchase of property is not sufficient).

194. *Alderman v. Stevens*, 189 So. 2d 168 (Fla. 2d DCA 1966); *see supra* text accompanying notes 133-34.

195. *City of N. Miami v. Margulies*, 289 So. 2d 424 (Fla. 3d DCA 1974); *see supra* text accompanying note 121.

196. *See, e.g., Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976) (\$191,269); *O.P. Corp. v. Village of N. Palm Beach*, 278 So. 2d 593 (Fla. 1973) (\$64,000); *Hough v. Amato*, 212 So. 2d 662 (Fla. 1st DCA 1968) (\$30,000).

197. 367 So. 2d 648 (Fla. 4th DCA 1979) (landowner made no effort to renew building permit); *see supra* text accompanying notes 64-67.

ment Corp.,¹⁹⁸ the expenditure of over \$2,550,000 was irrelevant because the landowner failed to satisfy the second element when he relied on an improper government act or omission. Even a large expenditure or a significant change in position will not trigger the doctrine where the property owner has relied on an illegal, unauthorized or mistaken government act.¹⁹⁹ Moreover, one court has indicated that expenditures will not result in the application of equitable estoppel if they are not actually based on reliance.²⁰⁰ For example, preliminary expenditures that are necessary prior to the proposal of a project are independent of any government act and are therefore insufficient for purposes of estoppel.

Despite the variety of equitable estoppel cases, only a few have indicated the tests for determining whether a landowner has incurred a sufficient amount of expenses or obligations. In *Metro-politan Dade Co. v. Rosell Construction Corp.*,²⁰¹ despite the landowner having expended \$21,000, the Third District Court of Appeal refused to apply equitable estoppel because of potential danger to the public health. The court stated that "this amount is not unreasonable in view of the total cost of the project which is under construction and the potential danger to the public health."²⁰² This statement indicates the court's inclination toward balancing expenses incurred with the public welfare as well as with the total cost of the project. Thus, even a large amount of expenses may be insufficient if the public welfare is in danger, and a larger project may require a greater change of position than a smaller project.

A further indication of the tests for determining the sufficiency of the reliance was illustrated in *Project Home, Inc. v. Town of Astatula*.²⁰³ In *Astatula*, the court estopped the town from preventing the development of a mobile home park. The owner had changed his position by the expenditure of only \$8,000. Nevertheless, the court upheld the adequacy of this expenditure, stating that "[a]lthough the amount of money expended by [the owner] was small in comparison to the millions of dollars expended

198. 364 So. 2d 850 (Fla. 2d DCA 1978) (landowner relied on an absence of zoning); see *supra* text accompanying notes 61-64, 80-82.

199. See *supra* text accompanying note 78; see also *Enderby v. City of Sunrise*, 376 So. 2d 444 (Fla. 4th DCA 1979).

200. *Smith v. City of Clearwater*, 383 So. 2d 681, 686 (Fla. 2d DCA 1980).

201. 297 So. 2d 46 (Fla. 3d DCA 1974); see *infra* text accompanying notes 218-21.

202. *Id.* at 48; see also *City of Fort Pierce v. Davis*, 400 So. 2d 1242 (Fla. 4th DCA 1981).

203. 373 So. 2d 710 (Fla. 2d DCA 1979); see *supra* text accompanying notes 154-56.

in [other] cases, the record shows that the sum so expended is greater than . . . [the] town budget for one year."²⁰⁴ This case indicates that a smaller change of position may suffice in a smaller town with smaller projects or in an area with a depressed economic development or little investment, while a larger expenditure may be necessary in a more populated or active area or an area with larger projects.

The Third District Court of Appeal refrained from applying equitable estoppel in *Dade County v. Bengis Associates, Inc.*,²⁰⁵ because of a permit which the county illegally issued as a result of a mutual mistake of law. The court stated that the refusal to estop the county did not create such an economic hardship for the landowner so as to provide an exception to the general rule that equitable estoppel will be inapplicable in cases of illegal government acts. While this case indicated a possible exception to this principle, it also indicated that estoppel may be easier to deny when there is relatively little hardship to the specific landowner.

Finally, *Smith v. City of Clearwater*²⁰⁶ indicates that property owners may have some rights even when there is no change in position. In *Smith*, the court stated:

There is an interplay between those situations in which the city is estopped because the property owner has spent large sums in reliance on the city's original position and those in which the city refuses to issue a permit for a use which is permissible under existing zoning. If the city has refused to issue the permit, the property owner often cannot run the risk of spending the money which might create the estoppel, because he is then on notice of the possibility that the city may take an adverse position. Carried to its extreme, a city could arbitrarily continue to refuse a permit and permanently deprive a property owner of the right to use his property according to existing zoning.²⁰⁷

Hence, the Second District Court of Appeal indicated that even where the property owner makes no expenditures in reliance on a government's acts, he may still be entitled to a building permit within the provisions of the existing zoning regulations, if he makes a valid application.²⁰⁸ Interestingly, this case suggests a pos-

204. *Id.* at 713.

205. 257 So. 2d 291 (Fla. 3d DCA), *cert. denied*, 261 So. 2d 839 (1972).

206. 383 So. 2d 681 (Fla. 2d DCA 1980); *see supra* text accompanying notes 46-48, 102-03, 135-38.

207. *Id.* at 688.

208. *Id.* at 689.

sible future divergence in Florida between the doctrine of vested rights and the doctrine of equitable estoppel.

V. THE NEW PERIL EXCEPTION

The Supreme Court of Florida raised the possibility of an important exception to the doctrine of equitable estoppel in 1950 when the court decided *Texas Co. v. Town of Miami Springs*.²⁰⁹ Following the construction of a gasoline station in reliance upon a building permit, the town passed an emergency ordinance effectively prohibiting the station's operation. The court in *Texas Co.* estopped the town from enforcing the ordinance, stating that it did not understand "what new peril arose during"²¹⁰ the time between the issuance of the permit and the passage of the ordinance. "[N]o peril to the health or welfare of the inhabitants seems to have existed"²¹¹ when the town passed the ordinance. Implicit in the court's decision was the notion that if a "new peril" had arisen, estoppel would not be available.

The Supreme Court of Florida again raised the possibility of this exception in *Sakolsky v. City of Coral Gables*.²¹² When the city attempted to rescind a permit which a landowner relied upon to substantially change his position, the court estopped the city. While noting that there was no showing that "its revocation was in fact required in the public interest,"²¹³ the court stated that estoppel prevented the arbitrary rescission of a permit. The court thereby indicated that had the revocation been so required, an exception to the doctrine would exist and the court would not have applied equitable estoppel.

The Supreme Court of Florida explicitly addressed the new peril exception in *Hollywood Beach Hotel Co. v. City of Hollywood*.²¹⁴ The court, however, did not apply the exception be-

209. 44 So. 2d 808 (Fla. 1950) (en banc); see *supra* text accompanying notes 157-58. Actually, the Supreme Court of Florida hinted at the existence of the exception in *Frink v. Orleans Corp.*, 159 Fla. 646, 656, 32 So. 2d 425, 430 (1947). While not expressly deciding the case on equitable estoppel grounds, the court affirmed the lower court's finding that estoppel applied. The court then quoted the lower court's finding that "[t]he question of whether such equitable estoppel would operate, where the use sought would contravene public safety and welfare, is not involved here because (1) [there will not be] a nuisance per se, and (2) . . . that public safety and general welfare would not be adversely affected." *Id.* at 656, 32 So. 2d at 430.

210. *Texas Co.*, 44 So. 2d at 809.

211. *Id.*

212. 151 So. 2d 433 (Fla. 1963); see *supra* text accompanying notes 24-38, 128-30.

213. *Id.* at 436.

214. 329 So. 2d 10, 16 (Fla. 1976). The exception was originally set out explicitly in the

cause the city did not advance a good reason for its action in preventing the completion of a building.²¹⁵ The court stated that adoption of the exception was not precluded for the future, but that the court would not consider it in the present case.²¹⁶ Notwithstanding this restraint, the court specifically set out the terms of the possible exception:

[A] city may revoke a building permit even after good faith reliance by the landowner on the zoning law and even after a substantial change has been made in his position or incurring extensive obligations, "... [sic] if the municipality can show that some new peril to the health, safety, morals, or general welfare of the municipality has arisen between the granting of the building permit and the subsequent change [in] zoning"²¹⁷

The Supreme Court of Florida has yet to officially adopt the exception; however, it continues to hint at its existence. Although the lower courts have also pointed to the exception's existence,²¹⁸ the only actual application of the new peril exception occurred in *Metropolitan Dade County v. Rosell Construction Corp.*²¹⁹ In *Ro-*

lower court's opinion in *City of Hollywood v. Hollywood Beach Hotel Co.*, 283 So. 2d 867, 870 (Fla. 4th DCA 1973), *rev'd in part*, 329 So. 2d 10 (1976). Although that court specifically held that the exception existed, it did not find the exception applicable to the facts of the case. For further discussion of the Supreme Court of Florida decision, see *supra* text accompanying notes 173-76.

215. *Hollywood Beach Hotel Co.*, 329 So. 2d at 13, 16.

216. *Id.* at 16.

217. *Id.* (quoting in part the lower court).

218. See *City of Miami v. 20th Century Club, Inc.*, 313 So. 2d 448 (Fla. 3d DCA 1974). In *20th Century Club*, the court found a vested right and estopped the city from preventing a private club's expansion. The court went on to state, however, that a property owner in the same situation might not always be entitled to rely on the government's original act, when such reliance would be unreasonable. *Id.* at 449. The court apparently intended that equitable estoppel would not apply when a danger to the public's health, safety, or welfare exists. See also *Dade County v. Gayer*, 388 So. 2d 1292 (Fla. 3d DCA 1980), where instead of relying on the new peril exception, the Third District Court of Appeal, in refusing to estop the county, relied on the general rule that estoppel is not available to sanction illegal acts. Consequently, the court stated that it was "unnecessary to consider the question of whether equitable estoppel could be invoked, where to do so would create a hazard or a public nuisance." *Id.* at 1295; see also *City of Miami Beach v. 8701 Collins Ave.*, 77 So. 2d 428 (Fla. 1954), and *Pasco County v. Tampa Dev. Corp.*, 364 So. 2d 850 (Fla. 2d DCA 1978) (if necessary for the public health, morals, welfare or safety, zoning regulations can be changed even where a landowner has detrimentally altered his position in reliance on the previous regulations). But see *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571 (Fla. 2d DCA 1975) (general growth problems and the protection of the public welfare are not sufficient reasons to invoke the exception); *City of Hollywood v. Pettersen*, 178 So. 2d 919 (Fla. 2d DCA 1965) (adverse effects to surrounding parties was not sufficient to invoke the exception).

219. 297 So. 2d 46 (Fla. 3d DCA 1974); see *supra* text accompanying notes 201-02. The court may have implicitly applied the new peril exception in *City of Fort Pierce v. Davis*,

sell, the Third District Court of Appeal refused to invoke the doctrine of equitable estoppel or find any vested rights, even though the landowner dedicated portions of his land, constructed a sewer line and began construction in good faith reliance. Although estoppel against the county would normally have applied, the court ruled that a new peril exception existed under the particular facts of the case. An inadequate safety margin for pressures in the county sewage line created emergency conditions, and construction would completely remove the margin. The court stated that "the County demonstrated a substantial question as to the effect of the construction upon public health."²²⁰ Further, the court indicated that the law applicable in such equitable estoppel cases "cannot properly be made the basis for a decision in a case which so directly involved public health."²²¹ As a result, the court in reaching its decision explicitly relied on the new peril exception to the doctrine of equitable estoppel.²²²

VI. CONCLUSION

An exposition of the doctrine of equitable estoppel appears simple and straightforward. The doctrine is applicable against a local government when a property owner has (1) relied in good faith (2) on an act or omission of that government (3) to make such a substantial change in position or incur such extensive obligations and expenses that it would be highly unjust and inequitable to destroy the right acquired.²²³ Its application has been justified on the grounds that it involves "nothing more than an application of the rules of fair play."²²⁴ The doctrine provides "desirable predictability" and safeguards against arbitrary govern-

400 So. 2d 1242 (Fla. 4th DCA 1981). The Fourth District Court of Appeal in *Davis* held that under the circumstances, the expenditures were not so extensive that it would be "highly inequitable and unjust" to permit the city to change the zoning. The court could have decided the case on the fact that existing zoning is not a sufficient government act upon which to rely, and that there was a lack of good faith reliance because the landowner had notice of the pending change. The court stated, however, that it was not deciding the case on that basis. Instead, the court indicated that the expenditures were not sufficient to overcome the city's legitimate concern for its welfare, safety and morals.

220. *Rosell*, 297 So. 2d at 47.

221. *Id.* at 48.

222. *Id.* The court quoted *City of Hollywood v. Hollywood Beach Hotel Co.*, 283 So. 2d 867, 870 (Fla. 4th DCA 1973), *rev'd in part*, 329 So. 2d 10 (1976).

223. *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 837, 841 (Fla. 1st DCA 1966).

224. *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975).

ment action.²²⁵ Upon an examination of past judicial interpretation, however, it is clear that the doctrine is not nearly as predictable and certain as its three elements suggest. Both property owners and local governments alike are confused as to its application. The various authorizations, requirements and conditions involved in starting and completing a project have multiplied, adding to, or perhaps creating, the lack of predictability. The profusion of cases interpreting the doctrine has created a vast, complicated array of case law. Consequently, each of the three elements of the doctrine and the relevant facts must be carefully analyzed and interrelated before any property owner or local government can reliably determine its position.

The first element, good faith reliance, may be negated by the existence of a "red flag". In addition, good faith reliance may be negated when the property owner had knowledge of some other requirement or condition, engaged in inappropriate action or inaction or did not provide all necessary information. While the "red flag doctrine" is relatively predictable, pending government action remains a threat to property owners due to the wide range of potential government involvement and the difficulty in obtaining and maintaining an awareness of pending action. "Self-created hardships" also remain as a serious threat to property owners because their occurrence is often expected and unclear. Conversely, a local government may think that it is equitably estopped, although the property owner has not actually satisfied this first element.

The second element is the existence of an act or omission of government upon which the property owner can rely. As the number of government acts and approvals involved with the development of property has multiplied, the predictability of the sufficiency of the act or omission has decreased. Some acts or omissions, such as the absence of zoning or the issuance of a building permit are relatively clear as to their consequences. Other acts are sufficient only under certain circumstances or in conjunction with other acts. In addition, some statements and informal actions may suffice, while others will not. Certain unfair dealings by a government body will also satisfy the requirement. However, an otherwise sufficient act may be negated because it was unauthorized, unlawful or mistaken, or because there was no right to rely on it. Significantly, it is often difficult to tell without in-depth analysis whether an act is unauthorized, unlawful or mistaken, or whether

225. Rhodes, *supra* note 1, at 791.

it provides a right to rely on it.

The last element, change of position, is the least litigated and discussed element of the doctrine. The courts have not developed clear-cut tests or guidelines to judge the sufficiency of a change of position. Property owners and local governments generally assume that the property owner has satisfied this requirement whenever he has expended money. Nevertheless, it is evident that the change of position must be induced by the local government and must be within the scope authorized by the government's act. While some cases have hinted at the existence of various tests of the sufficiency of the change of position, the courts have not yet consistently or frequently applied these tests.

After an examination of the three elements of the doctrine, the applicability of the new peril exception must be considered. The development of this exception has provided the public with important and necessary protection. Its existence, however, further diminishes the predictability of the doctrine. The exception makes it possible for the completion of a project to be prevented even though a property owner has satisfied all of the requirements of equitable estoppel and taken every precaution available during the course of the project. Furthermore, the facts necessary for the application of the exception usually will not arise or become evident until the project is underway.

Clearly, the predictability of the outcome of an action for equitable estoppel requires more attention than a mere cursory examination of the three elements. The nature of the property owner's action as well as the government's action must be considered. Relevant case law must be taken into account and carefully analyzed. The public health, safety, morals, and welfare must be considered in the context of the new peril exception. Finally, there remains the possibility of further judicial refinement of its interpretations and the possible creation of new or expanded tests as to the applicability of the doctrine.²²⁶

226. Commentators have regularly discussed alternatives to the present state of the doctrine of equitable estoppel. They have suggested compensatory payments as a method to prevent the application of the doctrine. Heeter, *supra* note 1, at 97-98. Performance standards may also be utilized to change projects without completely prohibiting them, thus diminishing the need for the doctrine. Rhodes, *supra* note 1, at 791. Many states simply require final authorization in the form of a building permit before any rights can vest. Commentators have also suggested development agreements between property owners and local governments as a possible solution. Hagman, *The Vesting Issue: The Rights of Fetal Development Vis-a-Vis the Abortions of Public Whimsy*, 7 ENVTL. L. 519 (1977); Note, *Emerging From the Confusion: Zoning and Vested Rights in Pennsylvania*, 83 DICK. L. REV. 515, 522-

25 (1979). Legislative action can provide greater certainty and predictability by establishing guidelines to determine when vested rights arise or when substantial reliance occurs. Rhodes, *supra* note 1, at 791; see FLA. STAT. § 380.06(12) (1980); Hagman, *supra* note 224, at 562; Maloney & Dambly, *The National Flood Insurance Program—A Model Ordinance for Implementation of Its Land Management Criteria*, 16 NAT. RESOURCES J. 665, 712-13 (1976); see also *Compass Lake Hills Dev. v. State*, 379 So. 2d 376 (Fla. 1st DCA 1979); *Dade County v. United Resources*, 374 So. 2d 1046 (Fla. 3d DCA 1979). Additionally, explicit conditions can be established as to when a property owner may validly rely upon various government acts. Rhodes, *supra* note 1, at 791. Nevertheless, the only immediate solution for property owners and local governments alike is a thorough understanding of Florida case law.